IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

MONDAY, THE 3RD DECEMBER 2007 / 12TH AGRAHAYANA 1929

OP.No. 26137 of 2000(J)

PETITIONERS:
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1. PRIYA DHARMAN.D,
HIGH SCHOOL ASSISTANT (MALAYALAM),
GURUDEVA HIGH SCHOOL,
PIRAVANTHOOR, KOLLAM DISTRICT.

2. THE MANAGER,
GURUDEVA HIGH SCHOOL,
PIRAVANTHOOR,
KOLLAM DIST.

BY ADV. SRI.S.ABDUL RAZZAK

RESPONDENTS:
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1. THE DISTRICT EDUCATIONAL OFFICER,
PUNALUR P.O.,
KOLLAM DISTRICT.

2. THE DEPUTY DIRECTOR (EDUCATION),
OFFICE OF THE DEPUTY DIRECTOR (EDUCATION),
KOLLAM.

3. THE GOVERNMENT OF KERALA,
REPRESENTED BY ITS SECRETARY,
GENERAL EDUCATION (E) DEPARTMENT,
THIRUVANANTHAPURAM.01.

BY GOVERNMENT PLEADER, SRI. T.T.MUHAMOOD

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 03/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O.P. NO.26137/2000

APPENDIX

PETITIONER'S EXHIBITS:

EXT. P1: COPY OF STAFF FIXATION ORDER NO.D.DIS.5791/99/B3 DATED 26-7-99.

EXT. P2: COPY OF 1ST PETITIONER'S APPOINTMENT ORDER DATED 5-6-2000.

EXT. P3: COPY OF G.O.(MS)NO.237/2000/G.EDN. DATED 15-7-2000.

/TRUE COPY/

P.A. TO JUDGE

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S.SIRI JAGAN, J.

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O.P. No.26137 of 2000(J)

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Dated this the 3rd day of December, 2007

JUDGMENT

The petitioners challenge Ext.P3 Government Order whereby the Government has directed that the number of posts in HSA(Malayalam) in an Aided School shall be determined based on the staff strength of Malayalam and not in accordance with the periods in Malayalam. The reasoning is that Ext.P3 is against Rule 6D of Chapter XXIII of Kerala Educational Rules. The petitioners contention is that on account of Ext.P3-Government Order, the appointment of 1st petitioner as HSA (Malayalam) has not been approved in spite of the fact that as per Rule 6D of the KER, three posts of HSA(Malayalam) are to be sanctioned. The petitioners therefore seek the following reliefs:

(i) issue a writ of certiorari or other appropriate writ, direction or order calling for the records leading to Exhibit P3 order and quashing the same,

(ii) issue a writ of mandamus or other appropriate writ, direction or order directing the 1st respondent to accord approval for Exhibit P2 appointment and to pay salary admissible to the post untrammeled by Exhibit P3 order of the 3rd respondent.

(iii) issue such other writ, direction or order as this Hon'ble Court may deem fit and proper on the facts and circumstances of this case and to allow this Original Petition with the petitioner's costs.

2. The learned Govt. Pleader submits that in so far as the petitioners have not challenged the staff fixation order for the relevant year, no useful purpose would be served by quashing of Ext.P3 alone. I find considerable merit in the contention of the learned Government Pleader. The petitioners have not challenged the staff fixation order for that year. The petitioners have not stated in the original petition that they or the Manager have/has challenged staff fixation order for the year. The advocate is also not able to submit as to whether staff fixation order has been challenged also. The learned Government Pleader submits that the petitioner has not challenged the staff fixation order in accordance with law. Without challenging the staff fixation order, the petitioners cannot get any relief in the matter of approval of the appointment of the 1st petitioner. Therefore, I am not inclined to consider the contention against Ext.P3 Government order purely for academic interest, hence in exercise of my discretionary jurisdiction under Article 226 of the Constitution of India.

In the circumstances, the original petition is dismissed.

Sd/-
S.SIRI JAGAN,
JUDGE

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